

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 96-312-E - ORDER NO. 96-743
OCTOBER 30, 1996

IN RE: Laurens Electric Cooperative, Inc.,)	ORDER
)	GRANTING
Petitioner,)	PETITION
vs.)	
)	
Duke Power Company,)	
)	
Respondent.)	
)	
)	

INTRODUCTION

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Petition of Laurens Electric Cooperative, Inc. (Laurens or the Petitioner) versus Duke Power Company (Duke or the Respondent). Laurens seeks certain relief against Duke in regard to electric service to certain industrial premises near Duncan, South Carolina. Both Petitioners filed affidavits and exhibits with the Commission.

Oral arguments were subsequently held on October 10, 1996 at 11:00 a.m., in the offices of the Commission, with the Honorable Guy Butler, Chairman, presiding. The Petitioner, Laurens was represented by E. Crosby Lewis, Esquire, Raymond E. Lark, Jr., Esquire, and Steven W. Hamm, Esquire. Respondent, Duke was represented by Jefferson D. Griffith, III, Esquire and William F.

Austin, Esquire. The Commission Staff (the Staff) was represented F. David Butler, General Counsel.

Subsequent to the oral arguments on October 10, 1996, Duke and Laurens filed a Joint Consent Motion to reopen the record in this matter and receive hearing exhibits, affidavits and other documents into evidence to clarify the record. Attached to the Joint Consent Motion were lists of the materials proposed to be entered into the record of this case.

We have examined the Motion, and have determined that the Joint Consent Motion should be granted, and the hearing exhibits, affidavits, and other documents in the lists attached to the Motion be entered into the record of this case as Hearing Exhibits. See Attachment 1 for lists of materials. Those exhibits provided by Duke shall be Hearing Exhibit No. 1, and those provided by Laurens will be denominated Hearing Exhibit No. 2 for the record.

With regard to the merits of this case, it should be noted that a dispute has arisen over electric service to what is now Carolina Coil, located near Duncan, South Carolina. From the evidence presented to the Commission, it appears that the building was initially constructed to provide housing for Dean Steel Buildings, Inc. and that all but approximately a foot of the present building resides within Laurens assigned territory by this Commission, pursuant to the Territorial Assignment Act of 1969 (S.C. Code Ann. §58-27-610 (1976) et seq.) Approximately one foot of the building resides in Duke assigned territory.

FINDINGS OF FACT

It should be noted that Duke had begun construction of electric service, facilities, lines, and equipment to the industrial premises, as well as roadway/area lighting, and has prepared to begin providing electric service over the objections of the Petitioner, Laurens. See Affidavit of Richard A. Barksdale and J. David Wasson, Jr., with attached letter to Tom Armstrong. Duke notes that the old Dean Steel Building facility is to be expanded with such further buildings that will extend the premises even further into Duke's territory, and, that further, Carolina Coil has requested service from Duke.

However, Charles Dean has provided an affidavit in this case to the effect that he is the President of Dean Steel Buildings, Inc. the former tenant of the premises in question, and that on February 24, 1987, Dean Steel Buildings, Inc. contracted for electric service with Laurens to provide electric facilities and service for electric energy up to approximately 1,000 kilowatts at its then new 20,000 square foot plant to be located in Spartanburg County, South Carolina. Further, Dean states in his affidavit that Laurens installed electrical facilities, and initially provided permanent electrical service to the Company's industrial premises.

Duke does not dispute this fact, but notes that, subsequently, Dean Steel Buildings, Inc. moved out of the premises, and that the service from Laurens lay dormant for some period of time. Further, Duke states that its proposed customer,

Carolina Coil has requested that it serve it with electrical service in writing, that the old premises of Dean Steel Buildings, Inc. will be reconstituted into new premises, and that the new premises will consist of two buildings to be served by one electric service meter, which will be located in Duke's assigned territory.

Laurens notes that Duke has installed both underground wiring and three-phase overhead wiring through Petitioner's assigned territory to the site, and appears to be ready to begin providing temporary service immediately to a new separate building which is designed to have a demand of less than 750 KW and which has approximately 13,800 square feet.

According to the Petitioner, Duke has also installed new poles which unreasonably interfere with the Petitioner's system in violation of the National Electrical Safety Code. See Affidavit of Kevin J. Mara. The customer installed a new 4,000 ampere switch panel in the same concrete building where the prior switch was located, and Duke has installed a 1,500 KVA transformer within 10 to 15 feet from Petitioner's transformer, and appears to be prepared to provide service to the new separate building with the new transformer and switch panel designed for the industrial premises.

The wiring configuration suggests, according to Laurens, that Duke intends to provide service to the entire premises with a single meter as a single new industrial premises. Further, it appears that the new customer intends to expand the size and load

of the pre-existing industrial premises.

The Petitioner has previously given written notice to the new customer of its strenuous objections to the construction of facilities and provision of service by Duke. According to Laurens, the construction and unreasonable interference with the Laurens system continue to the detriment of Laurens and the members of its cooperative. Laurens states that the construction and service, if any, violate several South Carolina Code Sections and Regulations. Because of this, Laurens asks the Commission to issue a Rule to Show Cause Order, to issue an Emergency Order immediately requiring Duke to cease and desist from undertaking such construction and providing such service, and allowing only Laurens to provide its facilities and any electric service requested by the customer, pending the outcome of this matter, as well as permanently; to direct the Respondent Duke immediately to dismantle and remove all of its facilities and equipment associated with its improper work on and around the premises, and for such other relief as is appropriate.

Duke states that the old premises have been reconstituted into new premises, that the new customer Carolina Coil has requested in writing that Duke serve it, that the new premises will consist of two buildings served by one electric meter in Duke territory, and charges for electric service will be calculated together in one billing. Therefore, Duke states that it has obvious rights under Section 58-27-620 to serve the new premises, in that, once the building was reconstituted, Duke was requested

to provide the new service "initially" to the premises.

CONCLUSIONS OF LAW

Clearly, both Laurens and Duke are "electric suppliers" under S. C. Code Ann. §58-27-610(1)(1976). Further, it is clear that S. C. Code Ann. §58-27-140(1)(1976) states that:

The Commission may, upon its own motion or upon complaint:

- 1) ascertain and fix just and reasonable standards, classifications, regulations, practices or service to be furnished, imposed, observed, and followed by any or all electrical utilities....

This Section provides the Commission with authority to regulate the electric service of Duke furnished in South Carolina. In addition, South Carolina Code Ann. §58-27-1280 sets out the remedies of an electrical utility or rural electric cooperative for any unreasonable interference with its service, and states that the Commission may, after hearing, make orders and prescribe terms and conditions in harmony with the chapter as are just and reasonable, including the removal of lines and the issuance of a Cease and Desist Order to the electrical utility, rural electric cooperative, or governmental body or agency causing the interference. Further, Regulation 103-304 of the Commission sets forth certain interference and prior approval provisions for construction and extension of electrical service.

In addition, S. C. Code Ann. §58-27-610(4)(1976) defines "industrial premises." This is held to be the premises of a person, firm, or corporation engaged in the business of manufacture, processing, assembling, fabrication or related work.

Second, S. C. Code Ann. §58-27-610(2) defines "premises."

These are:

the building, structure or facility to which electricity is being or is to be furnished; provided that two or more buildings, structures or facilities which are located on one tract or contiguous tracts of land and are utilized by one electric consumer for farming, business, commercial, industrial, institutional or governmental purposes, shall together constitute one "premises," except that any such building, structure or facility shall not, together with any other building, structure or facility, constitute one "premises" if the electric service to it is separately metered and the charges for such service are calculated independently of charges for service to any other building, structure or facility.

S. C. Code Ann. §58-27-620(2) sets out certain rights to serve industrial customers. This is stated as follows:

Any electrical utility shall have the right to furnish electric service to any industrial premises initially requiring electric service after July 1, 1969 if requested in writing to provide such service, and the connected load for initial full plant operation at such industrial premises is 750 kilowatts or larger....
(emphasis added)

Finally, S. C. Code Ann. §58-27-620(3) appears to limit temporary electric service for the construction of premises only to those electric suppliers which would have rights to serve under the section, if such premises were already constructed.

The Commission has studied this matter, including the entire record of this case, the pleadings of the parties, and all affidavits and exhibits filed with this Commission, and must conclude that Laurens has the exclusive right to serve the premises at issue.

First, it is clear to this Commission under the definition of

premises, as stated above, that all of the buildings, either in existence or to be constructed by Carolina Coil represent one premises.

Second, we believe that S. C. Code Ann. Section 58-27-620(2) mandates service by Laurens. The Code Section discusses the fact that any electrical utility shall have the right to furnish electric service to any industrial premises initially requiring electric service, after July 1, 1969, "if requested in writing to provide such service, and the connected load for initial full plant operation at such industrial premises is 750 kilowatts or larger...." It is clear to this Commission that, pursuant to the Affidavit of Charles Dean quoted above, Laurens initially furnished service to the premises which were then Dean Steel Buildings, Inc. on February 24, 1987, pursuant to a written request, and that the service for electrical energy was up to approximately 1,000 kilowatts.

We disagree completely with the argument that old premises may be reconstituted into new premises in this case. It is clear from the affidavits and other materials in this case that Carolina Coil wants to operate out of the already constructed building of Dean Steel Buildings, Inc. We do not believe that the further anticipated construction may convert the premises to such a degree that a new electric supplier may once again "initially" serve the premises in question.

Our conclusion in this case is further bolstered by the opinion rendered by this Commission in Order No. 80-696, Docket No.

79-298-E issued on December 16, 1980 in the case of Carolina Power & Light Company v. Pee Dee Electric Cooperative, Inc. In that case, residential premises were converted to commercial premises. Further, the Commission held that the original electric supplier should serve the premises, despite the fact that the premises were to some degree transformed. The Commission held that premises initially requiring electric service may not necessarily be transformed by additional conversion. As stated in that Order at 5, there is a policy reason for this holding:

The enactment of the statutory provisions currently codified in Sections 58-27-610 et. seq. was intended to establish and maintain an element of certainty and reliability in the designation of the rights of electric suppliers with regard to the areas in which such suppliers may provide service. Furthermore, a related intention of the legislation was the reduction or elimination of wasteful and inefficient duplication of electrical facilities and services.

Thus, Laurens' right to serve the Carolina Coil premises is clear.

This brings us to the next part of Laurens' complaint. Laurens states that Duke facilities are unreasonably interfering with its facilities. The affidavit of Keith J. Mara is helpful in making a determination in this regard. Mr. Mara, a Consulting Electrical Engineer, states that he inspected the facilities installed by Duke approximately ½ mile west of Dean Steel Buildings, Inc. in Spartanburg County, which were adjacent to existing electric distribution facilities owned and operated by Laurens. Among other things, Mr. Mara determined that Duke

constructed their electric distribution facilities adjacent to existing Laurens' electric distribution facilities, and that several Duke poles are installed too close to Laurens' conductor, which is in violation of the 1993 National Electrical Safety Code, Rule 234B1. Further, Mara states that Duke's conductors may be also too close to Laurens' conductor, thus violating various other rules, although further tests would be necessary to make a final determination on this point.

Mara goes on to state that Duke's construction creates operational and safety concerns for Laurens, working so close to Duke's conductor, even if said conductor is not in violation of safety rules. Mara states that a preferred utility construction practice would be to provide greater horizontal separation between Duke's facilities and Laurens' facilities. Among other exhibits, Laurens submitted pictures of the parallel lines of it and Duke. These do appear to this Commission to be extremely close together, thereby warranting the safety concerns voiced by Laurens. It is the opinion of this Commission that the Cease and Desist Order sought by Laurens should also be granted.

With regard to the procedure in this case, it should be pointed out that the initial relief sought by the Laurens' Petition was temporary in nature, with permanent relief to be sought in the future. However, we believe that during the course of this case, Duke consented to the October 10, 1996 hearing as being a final hearing in these matters, and understood that any ruling that the Commission would make would be final as to the merits of this case.

Duke submitted its affidavits and exhibits accordingly, and we believe Duke was in full understanding as to the finality of these proceedings. Therefore, the Order that is submitted by this Commission is a final Order in nature.

IT IS THEREFORE ORDERED THAT:

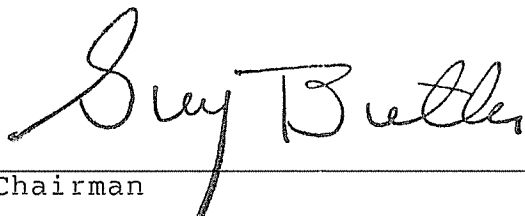
1. The Joint Motion for reopening the record and admission of exhibits into evidence is hereby granted as indicated.

2. Duke Power Company shall cease and desist from undertaking such construction and providing such service to Carolina Coil. Duke Power Company shall immediately dismantle and remove all of its facilities and equipment associated with its improper work on and around these premises.

3. Laurens Electric Cooperative, Inc. is hereby deemed to be the only electric supplier allowed to serve the Carolina Coil premises under the law of this State.

4. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Deputy Executive Director

(SEAL)

DUKE POWER COMPANY

Exhibit "A"

1. Affidavit of Thad Strickland dated October 9, 1996, with the following attachments:
 - a. Building Permit number 960-8116 dated September 30, 1996; and
 - b. Building Permit number 960-6840 dated August 21, 1996; and
 - c. Building Permit number 960-5536 dated July 1, 1996; and
 - d. Development Application number 9605538 dated July 1, 1996.
2. Affidavit of Michael D. Robinson dated October 9, 1996, with an attachment of the letter dated August 22, 1996 from Dick Barksdale to Mr. Michael D. Robinson.
3. Survey excerpts showing Duke's service territory dated October 1, 1996.
4. Letter dated July 25, 1996, from Thomas G. Armstrong to Ms. Cheryl Rudisill.
5. Affidavit of Cheryl Rudisill dated October 9, 1996.
6. Survey prepared for Carolina Coil, Inc. dated March 15, 1996, prepared by Neil R. Phillips & Company, Inc.

EXHIBIT "B"

AFFIDAVITS AND EXHIBITS SUBMITTED BY LAURENS
ELECTRIC COOPERATIVE, INC. INTO THE RECORD FOR
DOCKET NO. 96-312-E

1. Affidavit of Richard A. Barksdale dated October 2, 1996;
2. Affidavit of J. David Wasson, Jr. dated September 24, 1996;
3. Correspondence written by J. David Wasson, Jr. to Tom G. Armstrong, dated September 17, 1996;
4. Affidavit of Charles Dean dated September 13, 1996;
5. Affidavit of Kevin J. Mara dated September 20, 1996 which includes:
(i) a copy of the 1993 National Electric Safety Code Rule 234B1;
6. Affidavit of J. Keith Armstrong dated September 20, 1996 which includes:
(i) a copy of the 1993 National Electric Safety Code Rule 234B1;
7. Second Affidavit of J. Keith Armstrong dated October 2, 1996;
8. Verification of J. David Wasson, Jr. dated September 24, 1996;
9. Third Affidavit of J. Keith Armstrong dated October 7, 1996 which includes the following exhibits:
 - Exhibit A: Drawing produced by J. Keith Armstrong concerning the industrial premises at issue and electric territorial boundary lines between Laurens and Duke Power Company.
 - Exhibit B: Photograph showing that Duke has built a three phase line approximately .6 miles into Laurens' assigned territory parallel to Laurens' preexisting lines duplicating Laurens' lines and interfering with and preventing proper servicing of facilities.
 - Exhibit C: Photograph showing the dangerous duplication of lines.
 - Exhibit D: Photograph showing that Duke's new facilities violate NESC § 234B1, because they are too close to Laurens' preexisting facilities. There is only 13½ inches horizontal clearance instead of the 4½ feet minimum clearance to an open supply conductor over 750 V to 22 KV.
 - Exhibit E: Photograph showing that Laurens' transformer and meter is still

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on the premises.

Exhibit F: Photograph showing a close-up of Laurens' meter shown in Exhibit E.

Exhibit G: Photograph showing Laurens' transformer behind the newly installed Duke transformer.

Exhibit H: A letter written by J. Keith Armstrong to David E. White (Duke Power's Spartanburg District Manager) dated September 20, 1996.

10. Affidavit of J. Keith Armstrong dated October 10, 1996; and
11. Affidavit of Richard A. Barksdale dated October 10, 1996.